UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al.,

Plaintiffs,

DECLARATION OF CHRISTOPHER MILLER

-against-

CITY OF NEW YORK, et al.,

11 Civ. 5845 (LTS)(JCF)

Defendants.

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF CORRECTION,

Defendants.

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STATE OF NEW YORK)
:SS:
COUNTY OF QUEENS)

CHRISTOPHER MILLER declares pursuant to 28 U.S.C. Code §1746 under penalty of perjury that the following is true and correct:

1. I am the Deputy Commissioner of Classification, Custody Management and Facility Operations with the New York City Department of Correction ("DOC"), a position that I have held since July 25, 2022. Among my responsibilities is oversight of the intake processes at DOC.

2. I submit this declaration to the Court on September 15, 2023. This is my sixth report on intake; the others were submitted on February 8, 2023, March 20, 2023, April 17, 2023, May 17, 2023, and June 21, 2023.

3. The *Nunez* Second Remedial Order requires the Department to "[p]rocess all incarcerated individuals, including but not limited to new admissions and intra-facility transfers, through Intake and place them in an assigned housing unit within 24 hours. The Department shall provide the necessary Intake staff and space to satisfy this requirement. By November 15, 2021, the Department shall develop and implement a reliable system to track and record the amount of time any incarcerated individual is held in Intake and any instance when an individual remains in Intake for more than 24 hours." (1.(i)(c)). It is the Department's position that it is complying with this provision for implementation of a reliable tracking system.[1]

A. New Admissions

4. Procedures for new admissions have not changed since my previous declarations.

5. DOC continues to meet its obligation to house individuals within 24-hours of their entry into custody in the courthouse, stopping the clock when an event outside our control makes it impossible to continue processing. According to data from the New Admission Dashboard, 3,561 new male admissions were housed in the Eric M. Taylor Center ("EMTC") during the 72-day period from June 20, 2023 (since data in my last declaration) to August 30, 2023. That is an

[1] Since my last declaration all individuals who pass through intake, both new admission and non-transfers, such as religion or clinic/medical appointments, are tracked in ITS, except Court Production. Court production is tracked via the previously established accountability system described in paragraph 14 below and in my earlier declarations.

average of approximately 49 a day. Of those, only 39 (1 percent) were housed beyond 24 hours. The average time was 16.10 hours, excluding clock stoppages.[2]

6. Newly admitted women at the Rose M. Singer Center ("RMSC") are also being housed within the 24-hour requirement, with the clock being stopped only when an event outside our control makes it impossible to continue processing. According to the New Admission Dashboard, 350 new admissions were housed in RMSC during the 72-day period, an average of approximately 5 a day. Of those, none was housed beyond 24 hours, and the average time was 11.38 hours, excluding clock stoppages.[3]

7. Since the date of my last declaration the Nunez Compliance Unit ("NCU") conducted six audits of the intake process at EMTC on June 18, 2023, July 2, 2023, July 16, 2023, August 2, 2023, August 14, 2023, and August 29, 2023. As before, NCU compared Dashboard times to Genetec surveillance times. NCU's June 18th audit followed 10 new admission individuals in intake. Out of the 10 individuals observed, 9 were housed within 24 hours from arrival. Housing for 1 individual exceeded 24 hours, however, he had a hospital clock stop. The individual remained in the EMTC intake for 8 hours and 30 minutes, thereafter he was transferred to BHPW where he was ultimately admitted and housed. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, 5 of 10 were entered correctly; all 5 data entry errors were between 37-43 minutes after the individuals were observed entering the EMTC intake. The data entry errors were made by 2 members of service ("MOS") who both received retraining. With respect to the New Admission Dashboard data as compared to Genetec footage for Housed Time,

[2] There were a total of 274 stoppages during the 72-day period: 186 for court, 30 for hospital, 11 for URGI care, and 39 refusals.

[3] There were a total of 43 stoppages during the 72-day period: 22 for court, 2 for hospital, 8 for bail paid, and 19 refusals.

9 out of 10 were entered correctly. With respect to the 1 data entry error, the individual who had a hospital clock stop was entered as "housed" 42 minutes after he was observed entering the housing area at BHPW.

8. NCU's July 2nd audit followed 9 new admission individuals in intake. All 9 were housed within 24 hours from arrival, including 1 individual who was produced for court. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, all 9 were entered correctly; for housed time, 7 of 9 were entered correctly. With respect to the 2 data entry errors, 1 had a clock stop entry, instead of housed, in the dashboard at the time he was escorted into the housing area, and the second was entered as housed 11 hours and 57 minutes before entering the housing area; however, this individual departed the intake for court production 1 hour after he was noted as housed in the dashboard. Finally, with respect to clock stops, 1 individual who was produced for court, prior to being paced in a housing area, did not have a court clock stop entered into the dashboard.

9. NCU's July 16th audit reviewed 13 new admission individuals in intake. Of the 13, 11 individuals were housed within 24 hours from arrival. Housing for the other 2 individuals exceeded 24 hours, however, both individuals had court clock stops. With respect to the New Admission Dashboard data as compared to Genetec footage, for arrival time, all 13 individuals were entered correctly; for housed time, 12 of 13 individuals were entered correctly. With respect to the 1 data entry error, the individual was entered as "housed" 1 hour, 1 minute before entering the housing area. However, the individual was already in the housing area vestibule at the time he was entered as "housed" in the dashboard. He appeared to refuse to enter the house and remained in the vestibule for 1 hour prior to entering the housing area.

10. NCU's August 2nd audit reviewed 10 new admission individuals in intake. All 10 individuals were housed within 24 hours from arrival, including one individual who had a bail clock stop. With respect to the New Admission Dashboard data as compared to Genetec footage, for arrival time, all 10 were entered correctly; for housed time, 9 out of 10 were entered correctly. One individual was discharged from DOC custody after his bail was paid, and as such, there was no housing time entry for this individual.

11. NCU's August 14th audit reviewed 13 new admission individuals in intake. All 13 individuals were housed within 24 hours, including 3 individuals who had clock stops. With respect to the New Admission Dashboard data as compared to Genetec footage, 12 of 13 were entered correctly. Arrival time for one individual was documented 1 hour, 15 minutes before the individual was observed entering intake. For housed time, 11 of 13 were entered correctly. One individual was discharged from DOC custody at court, and as such, there was no housing time entry for this individual; with respect to the one data entry error, the individual was entered as housed 2 hours, 19 minutes after he was observed entering the housing area.

12. NCU's August 29th audit reviewed 12 new admission individuals in intake. All 12 individuals were housed within 24 hours, including one individual who had a court clock stop. With respect to the New Admission Dashboard data as compared to Genetec footage, arrival time for 12 of 12 was entered correctly. For housed time, 10 of 12 were entered correctly; with respect to the two data entry errors, one individual was entered as "housed" 1 hour and 25 minutes before he was observed entering the housing area, and the other individual was entered as "housed" 1 hour and 39 minutes after the individual was observed entering the housing area.

13. Additionally, IT sends a daily email to relevant stakeholders, including myself, titled "EMTC New Admissions Completions Last 24 Hours" which lists statistics for EMTC new

admissions including the number housed, the average time in intake, the minimum time in intake, the maximum time in intake, the individuals housed in more than 24 hours, and the number of clock stoppages.

B. Inter/Intra Facility Transfers and Facility Intake Areas

14. The five-person team that monitors persons-in-custody ("PIC") in the facility intake areas discussed in my previous declarations remains in place and continues to expedite movement. As I have noted in earlier declarations, at any time there is one person from the five-member team who is monitoring PIC movement through facility intake. Every four hours, a member of the team receives information from each facility on who is in each intake area (the individual's name, book and case number, the reason that they are there, and the time of their arrival) as well as a screenshot of the ITS system and a photograph from the Genetech system for each pen. The assigned officer also has access to the live video feed from the facility intake areas. The assigned officer checks whether individuals noted at each four-hour mark have been in the intake area for four hours or more, and if so the monitoring officer contacts the facility for an explanation and takes steps to expedite the individual's movement. The members of this team, as well as all intake supervisors, have been instructed that under no circumstances should any PIC remain in an intake area for more than 24 hours. (If a PIC is not present in Intake at the four-hour mark, then of course they will not be noted in this system – but that means that they were in Intake for less than four hours.)

15. Using ITS-generated data, we capture the times for PICs who are changing their housing units through the inter/intra facility transfer process with more precision. I review the ITS generated data daily. From June 30 to August 30, the ITS data shows that there were 2,010 inter-facility housing assignment transfers and 1,039 intra-facility housing assignment transfers. According to the ITS data, for inter-facility transfers, the average time in intake (counting the time

in both the sending and the receiving facility) was 2.0 hours, and the maximum time was 19.2 hours. For intra-facility transfers, the average time was 4.7 hours and a maximum time of 23.2 hours.

16. DOC data quality analysts have been reviewing the ITS system for errors. I review that report daily. The Department is still not perfect in entering every intra-inter facility transfer in the ITS system. The percentage properly entered on any given day varies from a minimum of 60% to a maximum of 89%, with a 78% median rate. We are working to improve the reliability of the entry of data into the ITS system, and will confer with the Monitoring Team on those efforts. The observations of the five-person team, however, give me full confidence that no inter-intra facility transfer is in intake anywhere close to 24 hours.

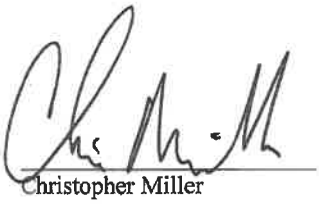
17. Every morning OMAP sends an email for the previous day to relevant stakeholders titled "Inter-Facility Intake Monitoring Report". The report sets forth the PIC intake stays per facility and the percent completion of inputting intake information for each PIC.

18. On July 19, 2023 the Department provided the Monitoring Team with four days worth of data related to Inter/Intra Facility Transfers for the period July 14, 2023 to July 18, 2023, including, copies of intake compliance sign-off folders, copies of the 4-hour monitoring reports, copies of the operational desk log book pages, and copies of memorandum to operational staff, facilities, and operational desk officers regarding intake compliance.

19. On July 28, 2023 I briefed the Monitoring Team on the Department's efforts to track and improve the quality of Intake data.

20. The Department has a robust system of oversight and checks and balances in place to ensure that individuals are not languishing in intake. I will continue to consult with the Monitoring Team regarding intake compliance and recommendations for improvements.

Dated: September 14, 2023
East Elmhurst, New York



Christopher Miller